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BEFORE THE SURFACE TRANSPORTATION BOARD
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C. 20423



FINANCE DOCKET NO. 35494

MID-MICHIGAN RAILROAD, INC., d/b/a TEXAS NORTHEASTERN
RAILROAD, —TRACKAGE RIGHTS EXEMPTION—LINE OF
TEXAS DEPARTMENT OF TRANSPORTATION IN FANNIN COUNTY, TX

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)

Pursuant to 49 C.F.R. § 1180.2(d)(7), Mid-Michigan Railroad, Inc., d/b/a Texas Northeastern Railroad ("TNER"), hereby files its Verified Notice of Exemption to acquire trackage rights to operate over 1.28 miles of railroad owned by the Texas Department of Transportation ("TxDOT"), which formerly were part of Union Pacific Railroad Company's ("UP") Bonham Subdivision from Mile Post 127.5 to Mile Post 128.78. The trackage rights are for the purpose of providing freight rail service to potential customers located in Bonham, Texas that were capable of being served by TNER pursuant to a lease of the subject line from Union Pacific Railroad Corporation ("UP"). As part of the transaction whereby TxDOT acquired ownership of the line, UP terminated a portion of the lease between milepost 127.5 and milepost 128.78 subject to TxDOT's grant of trackage rights to TNER over the same line of railroad. See F.D. No. 35493, *Texas Department of Transportation—Acquisition Exemption—Line of Union Pacific Railroad Company in Fannin County, TX*. The acquisition of these trackage rights will be based on a written agreement.

INFORMATION REQUIRED BY 49 C.F.R. § 1180.4(g)(1)(i):

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Section 1180.6(a)(1)(i)-(iii)

TxDOT has agreed to grant local trackage rights to TNER at Bonham, Texas, between Mile Post 127.5 and Mile Post 128.78, located in Fannin County, Texas. TNER will operate its own trains with its own crews over TxDOT's line under the trackage right.

The carriers involved in this transaction and their business addresses are as follows:

**Mid-Michigan Railroad, Inc., d/b/a Texas Northeastern Railroad
403 International Parkway, Suite 500
Richardson, Texas 75081**

**With Copy to: RailAmerica, Inc.
7411 Fullerton Ave., Suite 300
Jacksonville, Florida 32256
Attention: Commercial Counsel**

**Railroad Division
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701
(512) 486-5230 phone
(512) 416-2348 fax**

Questions regarding this exemption should be sent to the following:

**Richard H. Streeter
Law Office of Richard H. Streeter
5255 Partridge Lane, N.W.
Washington, D.C. 20016
202-363-2011**

The Trackage Rights Agreement will be signed and will become effective following the effective date of this Exemption. Operations under this exemption will begin thereafter. The purpose of the trackage rights is to allow TNER to provide freight rail service to potential customers located between Mile Post 127.5 and Mile Post 128.78 and interchange of freight traffic with Fannin Rural

Rail Transportation District ("FRRTD") or its operator. TENR will assume the common carrier obligation, while TxDOT will retain the residual common carrier obligation.

Section 1180.6(a)(5):

The trackage involved in the trackage rights agreement is located in the State of Texas.

Section 1180.6(a)(6):

The required map is attached as Exhibit No. 1.

Section 1180.6(a)(7)(ii):

A copy of the trackage rights agreement covering this transaction is attached hereto as Exhibit No. 2.

Applicants are agreeable to the imposition of the standard labor protective conditions imposed by the Board.

This transaction does not require the filing of an environmental report or an historic report under 49 C.F.R. § 1105.6(c)(4) and § 1105.8(b)(3), respectively.

A caption summary as required by 49 C.F.R. § 1180.4(g)(2)(i) is filed herewith.

Respectfully submitted,

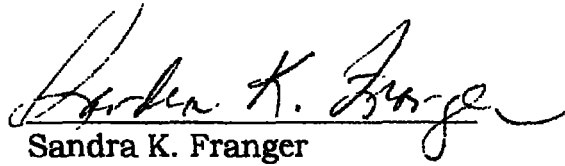


Richard H. Streeter
Law Office of Richard H. Streeter
5255 Partridge Lane, N.W.
Washington, D.C. 20016
(202) 363-2011

Dated: June 3, 2011

VERIFICATION

I, Sandra K. Franger, VP-Contracts, Mid-Michigan Railroad, Inc., d/b/a Texas Northeastern Railroad, verify under penalty of perjury that the information contained in the foregoing Verified Notice of Exemption is true and correct to the best of my knowledge, information and belief. I further certify that I am qualified and authorized to file this Verified Notice of Exemption.


Sandra K. Franger

SURFACE TRANSPORTATION BOARD

Notice of Exemption

Finance Docket No. 35494

**MID-MICHIGAN RAILROAD, INC., d/b/a TEXAS NORTHEASTERN
RAILROAD —TRACKAGE RIGHTS EXEMPTION—LINE OF
TEXAS DEPARTMENT OF TRANSPORTATION IN FANNIN COUNTY, TX**

Texas Department of Transportation ("TxDOT") will agree to grant local trackage rights to Mid-Michigan Railroad, Inc., d/b/a Texas Northeastern Railroad, ("TNER"), at Bonham, Fannin County, Texas between Mile Post 127.5 and Mile Post 128.78, a distance of 1.28 miles.

The trackage rights will be effective thirty days from the date of filing of this Exemption, with Operations commencing on or shortly after that date.

This Notice is filed under 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: June __, 2011

**By the Board
Cynthia Brown, Chief
Section of Administration
Office of Proceedings**

EXHIBIT 1

MAP

Fannin County Rural Rail District

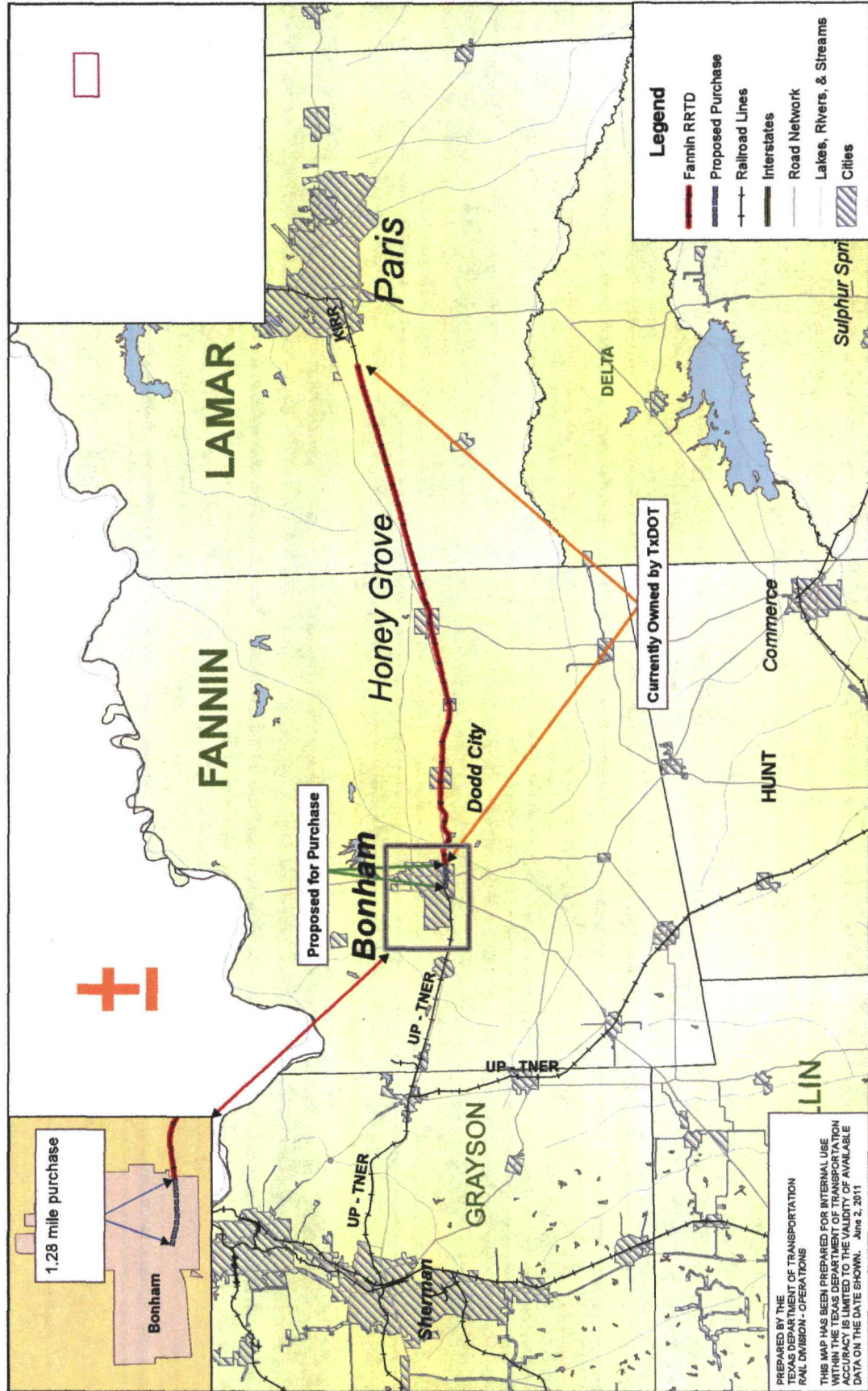


EXHIBIT 2
AGREEMENT

June 3, 2011

TRACKAGE RIGHTS AGREEMENT

BONHAM SUBDIVISION MILE POST 127.5 TO MILE POST 128.78, FANNIN COUNTY

THIS AGREEMENT ("Agreement") is entered into this ____ day of _____, 2011, by and between the Texas Department of Transportation, a Texas state agency ("TxDOT") and Mid-Michigan Railroad, Inc., (a Michigan corporation) doing business as Texas Northeastern Railroad ("TNER").

RECITALS

WHEREAS, TxDOT owns all of the rights, title, and interest in a line of railway between Mile Post 127.5 and Mile Post 128.78 in Fannin County, Texas, described in **Attachment 1** attached hereto and made a part hereof for all purposes (the "Rail Line"); the Rail Line is a portion of the Bonham Subdivision;

WHEREAS, TxDOT intends to lease the Rail Line to a rail operator for purposes of a tourist train;

WHEREAS, in the agreement dated _____, 2011, by which TxDOT purchased the Rail Line from Union Pacific Railroad Corporation ("Union Pacific"), Union Pacific represented that it will terminate the portion of an existing lease of rail facilities to TNER that concerns the Rail Line on the effective date of the Agreement. TxDOT in turn agreed to convey certain trackage rights to TNER as shown in this Agreement;

WHEREAS, Union Pacific previously leased the Rail Line to TNER, and TNER has acquired certain licenses related to the Rail Line. TNER has agreed to cancel its lease of the Rail Line from Union Pacific and assign the licenses to TxDOT in exchange for certain trackage rights as shown in this Agreement; and

WHEREAS, Texas Transportation Code Section 91.103 authorizes TxDOT to enter into agreements for the joint use of state-owned rail facilities.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

Article 1. Use of Rail Line

(a) Grant of Rights. Subject to the terms of the Agreement, TxDOT grants to TNER the exclusive right to use the Rail Line for purposes of freight rail

operations. TNER may set out, pick up, or serve any shipper located on the Rail Line. TNER may not store engines or rail cars on the Rail Line.

(b) Owner, Lessee of Rail Line. As owner of the Rail Line, TxDOT intends to lease the Rail Line to a rail operator (the "Lessee") for purposes of providing tourist train service. The Lessee will not be authorized to provide freight service over the Rail Line. Upon TxDOT entering into a separate lease agreement with a Lessee, Lessee shall be a third party beneficiary of this Agreement. As part of its exclusive direction and control of the Rail Line under this Agreement, TxDOT will give priority to the tourist train operations of the Lessee. However, TxDOT will use its best efforts to ensure tourist train operations do not unduly delay TNER's use of the line for freight operations.

(c) Third Party Rights. TNER shall not have the right to permit any third party to use the Rail Line. However, it may contract with a third party to provide freight service for and handle as its own equipment of any such third party.

(d) Access. TNER shall have the right to access the Rail Line at its west terminus at Mile Post 128.78.

(e) Improvement of Rail Line. As of the effective date of this Agreement the Rail Line is not in operational condition. It is anticipated that the Lessee will improve the portion of the Rail Line from milepost 127.5 to milepost 128.78 for purposes of operating a tourist train. TxDOT grants TNER the right to make improvements to some or all of the Rail Line as needed for freight operations subject to TxDOT's written approval and oversight of such improvements. TNER may begin rail operations under this Agreement upon the improvement of the Rail Line to the Federal Railroad Administration's Class I standards. At such time that TNER may undertake improvements to the portion of the line that is not used by the tourist train operation, TNER and TxDOT shall enter into a written agreement addressing the improvements to be made. As set out in Section 2.2 of General Conditions, TxDOT or its designee (a party other than TNER) will be responsible for ongoing maintenance associated with the improvement. TNER will continue to pay per mile trackage rights use fees as outlined in Article 2 of this agreement.

Article 2. Payments

TNER shall every October 1st make an annual payment to TxDOT for the use of the Rail Line during the period September 1st to August 31st immediately preceding the payment date. TNER shall pay the amount calculated of \$0.36 per Car Miles multiplied by Car Miles. TNER shall be responsible for the annual payment only if TNER utilizes the trackage rights in a particular year.

Car Miles are the sum of each car multiplied by the distance the car travelled on the Rail Line. The calculation shall include each car (loaded and

empty) and locomotive(s) operated with TNER's own crews and power over the Rail Line, and the miles of Rail Line used by such car or locomotive. It is agreed that the Rail Line is 1.28 miles one way, and that a round trip on the Rail Line is three miles. The calculation of Car Miles shall not be affected by the use of the Rail Line by other railroads, including any lessee of the Rail Line.

Light engines and caboose hops shall be considered one car for purposes of calculating Car Miles. Each locomotive in a train shall be counted as two cars. Each passenger car, freight car, and caboose shall be counted as one car. Each platform in an articulated unit of two or more platforms shall be counted as one car. The following activities will not be counted: switch engines while performing yard service, switch movements on the Rail Line while setting out and picking up cars at intermediate stations, business cars, hy-rail, and inspection cars, and equipment engaged in maintenance work.

The rate of \$0.36 per Car Mile shall be adjusted during the term of the Agreement as described in this paragraph. Beginning September 1, 2011, and each year thereafter, the rates shall be adjusted based on the relationship of the Association of American Railroads (or successor organization) Indexes of Railroad Material Prices and Wage Rates for Railroads of Class I, West District (material prices, wage rates, and supplements combined, excluding fuel) ("AAR Indexes") for the most recent year reported by AAR, compared to the AAR Indexes for the year 2010. The rates per Car Mile as increased or decreased shall comprise the Car Mile rate to be paid by TNER for use of the Rail Line.

TNER's annual payment shall be accompanied by a report of sufficient detail showing the number of cars, locomotives, and cabooses contained in each train that moved over the Rail Line during the twelve month period. TxDOT shall have the right to audit, at its sole expense, any and all records of TNER to verify the payment documentation.

Article 3. Common Carrier Obligation, Governmental Approvals

TxDOT grants and TNER acquires and assumes the common carrier obligation for rail freight service on the Rail Line. TxDOT shall retain the residual common carrier obligation. TNER, to the extent required by statute or regulation, shall prepare and file such documents as may be required to secure exemption from approval by the Surface Transportation Board ("STB") or other governmental authority of Lessee's acquisition of trackage rights and operations on the Rail Line. TNER shall have the right to seek approval to discontinue rail service. For all purposes relating to the ownership of the Rail Line, including all filings with or appearances before the STB or any other federal or state authority, TxDOT shall be shown as the owner of the Rail Line.

Article 4. Assignment of TNER's Previous Agreements

(a) As identified in the recitals of this Agreement, Union Pacific has agreed to terminate its lease agreement with TNER as it relates to the Rail Line on the effective date of the Agreement. Union Pacific and TNER have provided proof of the termination of the agreement in **Attachment 3**.

(b) TNER assigned to UP in the year 2006 its interests in all signboard leases affecting the Rail Line which had been granted by TNER or its predecessors. TNER's interest in all non-signboard property leases ("Leases") and utility/pipeline or access licenses, road crossing agreements and similar agreements ("Licenses") affecting the Rail Line which were granted by TNER or its predecessors, including TNER's agreement of February 29, 2008 with the City of Bonham for a water pipeline crossing, shall be assigned to and assumed by TxDOT on the effective date of the Agreement by duly executed Assignment and Assumption Agreement in the form marked **Attachment 4**.

Article 5. Liability

Any liability for loss, damage, injury, or death arising from operations under this Agreement shall be assumed, settled, and paid as provided in **Attachment 2**.

Article 6. Term

The Agreement is effective upon the date the last party executes the Agreement, and shall remain in effect for an initial term of twenty years. TNER shall have two options to renew and extend the term of this Agreement, such option to follow consecutively upon the expiration of the last month of the initial term and each succeeding term. Each renewal option shall be for a term of twenty years. Such option shall be exercised by TNER's giving written notice of its intention to renew and extend the term of this Agreement to TxDOT at least one year before the expiration of the then effective term. After sixty years, TxDOT or TNER shall each have the right to terminate the Agreement upon giving one year's written notice of termination to the other party. Upon giving written notice of termination, a party shall have the right to terminate the Agreement effective upon the date of expiration of the third twenty year term or one year after the notice, whichever is later.

Article 7. Notice

Notices, correspondence, and other documentation shall be mailed to the following addresses:

For the State of Texas:

Director of Rail Division
Texas Department of Transportation

For Texas Northeastern Railroad:

General Manager
Texas Northeastern Railroad

125 East 11th Street
Austin, Texas 78701

403 International Parkway, Suite 500
Richardson, Texas 75081

and

RailAmerica Commercial Counsel
RailAmerica, Inc.
7411 Fullerton Ave., Suite 300
Jacksonville, Florida 32256

Notices shall be sent via hand-delivery or certified mail, return receipt requested, and shall be deemed received upon receipt. From time to time a party may direct in writing a change in its mailing address.

Article 8. General Conditions

The general conditions as set forth in **Attachment 2** are made a part of this Agreement. In the event there shall be any conflict between the provisions of Attachment 2 and the main body of the Agreement, the provisions of the main body of the Agreement shall prevail.

Article 9. Miscellaneous Provisions

(a) Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, oral or written, between the parties concerning the subject matter of this Agreement.

(b) Amendment. No modification, addition, or amendment to this Agreement shall be effective unless such modification, addition, or amendment is in writing and signed by the parties.

(c) Governing Law. The Agreement shall be governed by the laws of the State of Texas.

(d) Counterparts. The Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument.

(e) Severability. If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then it is the intention of the parties that the remainder of the Agreement shall not be affected and shall be valid and enforceable to the fullest extent permitted by law.

(f) Parties in Interest. Except as expressly provided in this Agreement, including as provided in Article 1(b), nothing in this Agreement, whether express

or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns, nor is anything in this Contract intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right to subrogation or action over or against any party to this Agreement.

(g) Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

(h) Effect of Headings. The headings of the paragraphs of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

(i) Number and Gender. When required by the context of this Agreement, each number (singular and plural) shall include all numbers, and each gender shall include all genders.

(j) Joint and Several Liability. In the event either party hereto now or hereafter shall consist of more than one person, firm, or corporation, then and in such event, all such persons, firms, or corporations shall be jointly and severally liable as parties under this Agreement.

(k) Negotiated Terms. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Agreement.

(l) Recitals and Exhibits. The recitals and contents of all Attachments to this Agreement are incorporated by reference and constitute a material part of this Agreement.

(m) Not an Offer. The submission of this Agreement to TNER for review or signature does not constitute an offer to enter into the Agreement nor the granting of an option or other rights with respect to the Rail Line. No Agreement with respect to the Rail Line shall exist, and this writing shall have no binding force or effect, until executed and delivered by both TxDOT and TNER and approved by the Chief Officers and/or Boards of each party.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement as of the date first above written.

**STATE OF TEXAS
DEPARTMENT OF TRANSPORTATION**

Executed by the Executive Director and approved for the purpose and effect of activating and/or carrying out the orders, established policies, or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: _____
Amadeo Saenz, Jr., P.E.
Executive Director

**MID-MICHIGAN RAILROAD, INC.
D/B/A Texas Northeastern Railroad**

By: _____
Sandy Franger
Vice President-Contracts

Attachment 1

[Attachment 1 will be Page 1 of the boundary survey provided by Union Pacific to TxDOT in August 2010. The survey is dated February 24, 2010.]

TRACKAGE RIGHTS AGREEMENT

General Conditions

Section 1. DEFINITIONS

1.1 "Agreement" shall mean that certain agreement to which this Attachment 2 is appended, between the State of Texas, Texas Department of Transportation (TxDOT), and Texas Northeastern Railroad (TNER), concerning the Bonham Subdivision between Mile Post 127.5 and Mile Post 128.78 in Fannin County, Texas.

1.2 "Owner" shall mean TxDOT, TxDOT's Lessee of the Joint Trackage, or a person contracted for rail operations on the Joint Trackage.

1.3 "User" shall mean the party granted by the Agreement the right to use the Joint Trackage.

1.4 "Joint Trackage" shall mean track structure of Owner as described in the Agreement as the Rail Line, including necessary right-of-way and appurtenances and support facilities thereof, including but not limited to signals, signal systems, communications, rail and fastenings, switches and frogs complete, bumpers, ties, ballast, roadbed, embankments, bridges, trestles, culverts, and other structures or things necessary for support of and entering into construction thereof, and if any portion thereof is located in a thoroughfare, the terms shall include pavement, crossing planks, and other similar materials or facilities used in lieu of pavement or other street surfacing material at vehicular crossings of tracks, culverts, drainage facilities, crossing warning facilities, and all Changes in and/or Additions to (as that term is hereinafter defined), thereto now or in the future located as are required or desirable for the operation of the trains of the parties hereto.

1.5 "Equipment" shall mean owned or leased trains, locomotives, cars, cabooses, vehicles, and machinery which are capable of being operated on railroad tracks, or operated on right-of-way for purpose of the maintenance or repair thereof.

1.6 "Light Engines" shall mean one or more locomotive units not coupled to cars.

1.7 "Caboose Hops" shall mean one or more locomotive units coupled to one or more cabooses with no cars coupled.

1.8 "Changes in and/or Additions to" and "Additions" (including retirements) shall mean work projects, the cost of which is chargeable in whole or in part to Property Accounts as defined by Uniform System of Accounts for Railroad Companies as prescribed by the Surface Transportation Board (STB) as of the effective date of this Agreement.

Section 2. MAINTENANCE, ADDITIONS, OPERATION, AND CONTROL

2.1 Owner shall construct, maintain, repair, and renew at the sole cost and expense of Owner, and shall own the portions of the track connections between the terminus at each end of the Joint Trackage and the continuing rail tracks hereto located on the right-of-way of Owner.

2.2 The construction, maintenance, repair, and renewal of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall make any Changes in and/or Additions to the Joint Trackage which may be required by law, and progressively during construction these shall become part of the Joint Trackage. Owner may make any Changes and/or Additions to the Joint Trackage which Owner deems necessary or desirable for the safe, efficient, and economical use of the Joint Trackage by the parties, and these shall progressively during construction become part of the Joint Trackage. User may request Changes in and/or Additions to the Joint Trackage which User shall deem necessary or desirable for the safe, efficient, and economical use of the Joint Trackage, and Owner shall, if it concurs, construct the same upon such terms and conditions as may be agreed upon and they shall become part of the Joint Trackage. In the event any Changes and/or Additions are necessitated by the additional use of the Joint Trackage by User, then the cost thereof shall be paid by User. Owner shall make no retirement, withdrawal, elimination, or disposal of any part of the Joint Trackage which would permanently or materially impair the usefulness thereof to User.

2.3 The management and operation of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall have the unrestricted power to change the management and operations on and over the Joint Trackage as in its judgment may be necessary, expedient, or proper for the operations thereof herein intended.

2.4 Owner shall employ all persons necessary to construct, operate, maintain, repair, and renew the Joint Trackage. Owner shall be bound to use only reasonable and customary care, skill, and diligence in the construction, operation, maintenance, repair, and renewal of the Joint Trackage and in managing same. The Joint Trackage shall be kept in a state of reasonable repair and reasonably suitable for the combined requirements of the parties and of such other railroad companies as Owner has heretofore admitted or may hereafter admit to use of the Joint Trackage. Notwithstanding anything to the contrary contained in this Agreement, User shall not, by reason of Owner's performing or

failing or neglecting to perform any operation, maintenance, repair, renewal, or management of the Joint Trackage, have or make against Owner any claim or demand for any loss, damage, destruction, injury, or death whatsoever resulting therefrom.

2.5 All officers, agents, and employees of Owner engaged in the management, operation, and maintenance of the Joint Trackage shall perform their duties in a fair, impartial, and just manner.

2.6 User, at its sole cost and expense, shall install and maintain in and upon its Equipment such equipment, radios, or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of Owner, for operation of trains on the Joint Trackage. User will not, however, be required to install any equipment or devices not in use on Equipment of Owner.

2.7 Owner may from time to time provide any track or tracks on the Joint Trackage other than those delineated in the Agreement for use by User. When such tracks which are not part at the Joint Trackage are used as provided herein, the Agreement shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

2.8 Each party shall be responsible for furnishing, at its own expense, all labor, fuel, and train supplies necessary for the operation of its own trains over the Joint Trackage. In the event a party hereto does furnish such labor, fuel, or supplies to another party hereto, the party receiving same shall promptly, upon receipt of billing therefor, reimburse the party furnishing same for its reasonable costs thereof.

2.9 The operation by User on or along the Joint Trackage shall at all times be in accordance with the rules, instructions, and restrictions of Owner, but such rules, instructions, and restrictions shall be reasonable, just, and fair between all parties using the Joint Trackage and shall not unjustly discriminate against any of them.

2.10 User shall be responsible for the reporting and payment of any mileage, per diem, use, or rental charges accruing on cars and equipment in User's account on the Joint Trackage.

2.11 With respect to the operation of Equipment on and over the Joint Trackage, each party shall comply with all applicable laws, rules, regulations, and orders promulgated by any municipality, board, commission, or governmental agency having jurisdiction thereover, and if any failure on the part of either party to so comply shall result in a fine, penalty, cost, or charge being imposed or assessed on or against the other party, such other party shall give prompt notice to the failing party and the failing party shall to the extent allowed by law promptly reimburse and indemnify the other party for such fine, penalty, cost, or charge

and all expenses and attorneys' fees incurred in connection therewith, and shall upon request of the other party, defend such action free of costs, charge, and expense to the other party.

2.12 All employees of User engaged in or connected with the operations of User on or along the Joint Trackage shall be required to pass periodic examinations on the rules of Owner related to the Joint Trackage, provided, with respect to such examinations that, upon request of User, Owner shall qualify one or more of User's supervisory officers on said rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Joint Trackage. Pending qualification of train and engine crews of User, Owner shall furnish pilots, at the expense of User, as deemed necessary by Owner to assist in operating trains of User over the Joint Trackage.

2.13 If any employee of User shall neglect, refuse, or fail to abide by Owner's rules, instructions, and restrictions governing the operation on or along the Joint Trackage, such employee shall, upon written request of Owner, be prohibited by User from working on the Joint Trackage. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal, or failure on the part of any employee of User, then upon such notice presented in writing, Owner and User shall promptly hold a joint investigation in which all parties concerned shall participate and bear the expense for its officers, Counsel, witnesses, and employees. Notice of such investigations to employees of User shall be given by User's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements, if applicable, between User and its employees. If, in the judgment of Owner, the result of such investigation shows the employee should be withdrawn by User from service on the Joint Trackage, the Owner shall so direct, and User shall release and indemnify Owner from and against any and all claims and expenses because of such withdrawal. If the disciplinary action is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Trackage by reason of such occurrence.

2.14 If any Equipment of User is bad ordered en route on the Joint Trackage and it is necessary that it be set out, such Equipment shall, after being promptly repaired, be promptly picked up by User. Unless otherwise agreed, Owner may, upon request of User and at User's expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and equipment of Owner while in any manner so engaged or while en route to or returning to Owner's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User. However, should Owner after repairing such Equipment for User, move directly to perform service for Owner's

benefit rather than return to Owner's terminal, then User's exclusive time and liability end when Owner's employees depart for work to be performed for Owner's benefit. In the case of such repairs by Owner to freight cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the AAR Interchange Rules and Code of Car Service Rules adopted by the AAR, hereinafter collectively called "Interchange Rules," in effect at the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules.

2.15 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be rerailed or cleared by Owner, except that employees of User may rerail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required and prior permission has been granted by Owner. The costs and expenses of clearing derailments and wrecks shall be at User's expense unless otherwise provided for in allocation of liability in Section 5 of these General Conditions.

2.16 In the event Equipment of User shall be forced to stop on Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment, or any other cause not resulting from an accident or derailment, and such Equipment is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if in emergencies, crippled or otherwise defective freight cars are set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help, or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. Such assistance shall be at User's cost and expense.

2.17 User shall pay to Owner expenses incurred by Owner in the issuance of timetables made necessary solely by changes in the running time of the trains of User over the Joint Trackage. If changes in running time of trains of Owner or third parties, as well as those of User, require the issuance of timetables, then User shall pay to Owner that proportion of the expenses incurred that one bears to the total number of parties changing the running time of their trains. If changes in running time of trains of Owner or third parties, but not those of User, require the issuance of timetables, then User shall not be required to pay a proportion of the expenses incurred in connection therewith.

2.18 User shall be responsible for reporting annually, to Owner, the statistical data called for in the Agreement, which may include, but is not limited to, number of cars, trains, and car miles operated on the Joint Trackage.

Section 3. BILLING, DEFAULT

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives, and equipment rental rates as published by the Owner. User shall pay to Owner at Rail Division of the Texas Department of Transportation or at such other location as Owner may from time to time designate, all the compensation and charges of every name and nature which in and by the Agreement User is required to pay in lawful money of the United States within sixty (60) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on amount of the expenses incurred and services rendered during the billing period.

3.2 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided no exception to any bill shall be honored, recognized, or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) if in connection with a project for which a Roadway Completion Report is required, after the last day of the calendar month in which the Roadway Completion Report is made covering such project, except that omitted retirements and Additions will still be reflected as appropriate adjustment to valuation base retroactive no more than three (3) years from date of billing, or (iii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

3.3 So much of the books, accounts, and records of each party hereto as are related to the subject matter of the Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto. All books, accounts, and records shall be maintained to furnish readily full information for each item in accordance with STB Regulations as contained in "Title 49 Records," and appertaining sections thereof.

3.4 Should any payment become payable by Owner to User under the Agreement, the provisions of Section 3.1 through 3.3 of these General Conditions shall apply with User as the billing party and Owner as the paying party.

3.5 Should User fail to make any payment when due which User is obligated to make under the Agreement, or fail in any other respect to perform as required under the Agreement, and such default shall continue for a period of six (6) months after notice in writing of such default is given by Owner to User, Owner may at its election exclude User from the use of the Joint Trackage. Thereupon

User shall surrender to Owner all said Joint Trackage and shall have no claim or demand upon it, by suit at law or otherwise, on account of said exclusion, provided that failure to make any payment which is the subject of arbitration or litigation between the parties shall not be deemed, pending the decision in such arbitration or litigation, cause of forfeiture hereunder. Owner may waive such default, but no action of Owner in waiving any default shall affect any subsequent default of User or impair any rights of Owner resulting therefrom.

Section 4. HAZARDOUS MATERIALS AND ENVIRONMENTAL CLAIMS

4.1 User shall not treat, store, or dispose of hazardous waste or hazardous substances, as defined in (i) the Resource Conservation and Recovery Act, as amended, or (ii) the Comprehensive Environmental Response Compensation and Liability Act, as amended, or (iii) subsequent legislation regulating discharges into the environment, on the Joint Trackage.

4.2 Responsibility for Environmental Claims (as defined in Section 4.6, below) as between the parties shall be borne as follows:

a. User shall be responsible for Environmental Claims to the extent they result from (i) the use of, or presence upon, the Joint Trackage by User or its contractors or invitees, or (ii) the negligence or willful misconduct of User or its contractors or invitees in operations on or over the Joint Trackage.

b. Owner shall be responsible for Environmental Claims to the extent that User is not responsible for such claims pursuant to Section 4.2.a.

4.3 Each party shall release the other party to the extent it is responsible for an Environmental Claim, and to the extent of such responsibility and to the extent allowed by law, shall defend, indemnify, protect, and save harmless such other party from and against such Environmental Claim and costs associated therewith, including, but not limited to, environmental consultant fees, attorneys' fees and third party claims.

4.4 In the event any incident, accident, derailment, or vehicle striking or being struck by Equipment (hereafter "Derailment") involving Equipment operated by a party hereto carrying (i) hazardous materials, substances, or wastes, as defined pursuant to Federal or State Law, or (ii) pollutants (hereinafter collectively referred to as "Hazardous Materials") shall occur on the Joint Trackage, any report required by Federal, State, or local authorities shall be the responsibility of such party. User shall advise the Owner immediately of the occurrence of a Derailment involving Equipment operated by the User carrying Hazardous Materials.

Unless otherwise agreed by the parties, Owner shall undertake any Response Action (as defined in Section 4.5, below) in accordance with all

Federal, State, or local regulatory requirements necessitated by a release of Hazardous Materials on Owner's right-of-way underlying the Joint Trackage from Equipment operated by either party hereto upon the occurrence of a Derailment. User shall have data or a representative available at the scene of any Derailment involving Equipment operated by it to provide information concerning the characteristics of Hazardous Materials released.

If following a Derailment upon the Joint Trackage Hazardous Materials must be transferred to undamaged cars or other vehicles, unless otherwise agreed by the parties, the party whose Equipment was involved in such Derailment shall perform the transfer; provided, however, that if the Hazardous Materials are in damaged cars of a train of User that are blocking the Joint Trackage, Owner shall transfer the Hazardous Materials; provided further that transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.5 In the event any cleanup, response, removal, or remediation of any environmental condition on the Joint Trackage (hereinafter collectively referred to as "Response Action") is necessary, neither party shall be entitled to any damages, actual or consequential, by reason of the Response Action's interference with the other party's use of the Joint Trackage. Owner and its contractors shall have full unrestricted and unconditional access to the Joint Trackage for the purpose of completing or engaging in a Response Action for which Owner has any responsibility or, at Owner's option, a Response Action which Owner has undertaken should User fail to diligently pursue and complete such Response Action to the satisfaction of Owner; provided, however, that any Response Action (i) shall be undertaken and completed pursuant to a work plan (including a schedule) submitted to the other party for its review, and, in the case of Owner, approval and (ii) shall not unreasonably, in terms of duration or otherwise, restrict the other party's use of the Joint Trackage. Either party's completion of any of the other party's obligations hereunder shall not be deemed a waiver of such obligations under this Agreement. Owner shall have the right, but not the obligation, to conduct reasonable inspections of any Response Action of User, and User shall provide Owner all information requested by Owner regarding any Response Action of User or any Environmental Claims for which User is responsible.

4.6 The term "Environmental Claim" means the direct costs of any cleanup, response, removal, remediation, natural resource damage, closure, or post-closure required by any environmental conditions affecting the air, soil, surface waters, ground waters, streams, sediments, or similar environmental conditions caused by, resulting from, arising out of, or occurring in connection with this Agreement.

4.7 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and repairing the Joint Tracks or any

other property damaged thereby shall be borne by the party or parties liable therefor pursuant to the allocation of liability in Section 5 of these General Conditions.

Section 5. LIABILITY

5.1 It is the express intention of the parties, both Owner and User, that, except as otherwise provided in Section 4 of these General Conditions, any liability for loss, damage, injury, or death which arises from the operations under the Agreement shall be assumed and paid as specified in this Section 5. For the purpose of this Section 5, the following definitions shall apply:

"Loss or Damage" shall mean without limitation all claims, liability, cost, and expense of every character including amounts paid under any State or Federal compensation law incident to loss or destruction of or damage to property and injury to and death of persons arising from the performance or existence of the Agreement.

"Joint Employees" shall mean one or more officers, agents, employees, or contractors of Owner while actually engaged in maintaining, repairing, constructing, renewing, removing, inspecting, or operating the Joint Property or in making Changes in or Additions thereto for the benefit of all of the parties hereto, or while preparing to engage in, en route to or from, or otherwise on duty incident to performing such service. Such officers, agents, employees, or contractors shall not be deemed "Joint Employees" while en route from the performance of such work as hereinbefore described to perform service for the benefit of less than all of the parties hereto.

"Joint Property" shall mean the Joint Trackage and all Equipment while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, or operating the Joint Trackage or in making Changes in or Additions thereto for the benefit of all the parties hereto, or while preparing to engage in, en route to or from, or otherwise incident to performing such service. Such Equipment shall not be deemed "Joint Property" while en route from the performance of such work as hereinbefore described to perform service for the benefit of less than all of the parties hereto.

"Sole Employees" and "Sole Property" shall mean one or more officers, agents, employees, contractors, or Equipment, while engaged in, en route to or from, or otherwise on duty incident to performing service for the benefit of one or more, but fewer than all, of the parties hereto. Pilots furnished by Owner to assist in operating Equipment of User shall be considered the Sole Employees of User. All such officers, agents, employees, contractors, or Equipment, while engaged in, en route to or from, or otherwise incident to repairing Equipment, rerailing, or clearing wrecks or derailments or engaged in the repair or renewal of the Joint Property subsequent to any such wreck or derailment shall, for the purpose of

this Section 5, be deemed the Sole Employees or Sole Property of the party bearing the cost of repair or of the other Loss or Damage of the wreck or derailment, or if more than one party is bearing the cost of the repair or of the other Loss or Damage, the cost shall be borne equally by such parties. Officers, agents, employees, contractors, or Equipment, while en route from performing such repair, rerailing, or clearing of wrecks or derailments or renewing the Joint Property to perform another type of service shall not be deemed to be performing service incident to the instant repair, rerailing, or clearing of a wreck or derailment.

5.2 As between the parties hereto only, each party shall bear all cost of Loss or Damage to its Sole Employees, patrons, invitees, and others on its Equipment, or on or about the Joint Property in transaction of business for or with such party, its Sole Property, or property in its care, custody, or control, except when the Loss or Damage is contributed to by the acts or omissions, negligent or otherwise, of the Sole Employees or Sole Property of one or more other parties hereto, with or without the concurring acts, omissions, or negligence of Joint Employees and/or Joint Property, in which event the party whose Sole Employees or Sole Property contributed to the same shall bear all of the costs, or equally if more than one party's Sole Employees or Sole Property shall have contributed to the same.

Loss or Damage to third parties, Joint Employees, or Joint Property contributed to by the acts or omissions, negligent or otherwise, of Sole Employees or Sole Property of one or more of the parties hereto, with or without the concurring acts, omissions, or negligence of Joint Employees or Joint Property, shall be borne by the party whose Sole Employees or Sole Property contributed to the same, or equally if more than one party's Sole Employees or Sole Property shall have contributed to the same. Loss or Damage to third parties, Joint Employees, or Joint Property involving only Joint Employees, Joint Property, or occurring in such a way that it cannot be determined how such Loss or Damage came about shall be borne by the parties according to their respective Car Mileage proportion for the prior year.

5.3 It is understood and agreed that a number of vehicular and pedestrian crossings of the Joint Trackage presently exist, or may be constructed. User agrees to accept all vehicular and pedestrian crossings in whatever condition they may be during the term of the Agreement and will not assert any claim, demand, or cause of action against Owner and will hold Owner harmless from any claim, demand, or cause of action arising out of any vehicular or pedestrian crossing accident on the Joint Trackage in which the engines, cars, or train of a User only is involved.

5.4 For the purpose of this Section 5, Equipment of any third party railroad company or companies being detoured over the Joint Trackage and all persons other than Joint Employees engaged in moving Equipment, shall be considered

the Equipment and employees of Owner. Equipment, and other property being handled for or used by any party hereto shall, unless Joint Property, be considered the Sole Property of that party for purposes of this Section 5. Each party hereto agrees that the acts and decisions of the party hereto performing any management, maintenance, repair, renewal, removal, improvement, operation, or similar function of or for the Joint Property shall be deemed acts and decisions of a Joint Employee.

5.5 To the extent allowed by law, it is the express intention of the parties hereto, both Owner and User, that where an indemnity provided for in this Agreement is applicable as provided herein, that such indemnity includes the negligence of the indemnified party whether that negligence is active or passive, or is a concurring cause of the Loss or Damage; provided that said indemnity shall not protect the indemnified party from liability for Loss or Damage arising from the sole negligence of the indemnified party, its Sole Employees, or solely from the criminal actions of the indemnified party or its Sole Employees.

5.6 Each party hereto shall have the right to settle or cause to be settled for it, all claims for damages for which such party shall be liable under the provisions of this Section 5 and to defend or cause to be defended all Suits for recovery of any such damages.

In case a suit shall be commenced against either party hereto for or on account of damages for which the other party hereto is solely or jointly liable under the provisions of this Section 5, the party so sued shall give notice to such other party of the pendency of such suit and thereupon such other party may assume or join in the defense of such suit.

In the event that both of the parties shall be liable hereunder for any damages and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties so jointly liable therefor, release from liability shall be taken for and in the name of both parties so liable.

If a judgment shall be recovered against and satisfied by one party involving a liability which should under the Agreement be borne entirely or participated in by the other party, then all expenses of whatsoever nature, including costs and fees connected with such judgment and with the prosecution of the suit upon which it was based, shall be settled between the parties in strict accordance with the provision of the Agreement and the party against which such judgment shall have been recovered shall be promptly reimbursed by such other party to the extent to which the latter is indebted.

5.7 The foregoing notwithstanding, neither party shall have any claim against the other party for its acts, omissions, or negligence giving rise to Loss or Damage caused by or resulting from interruption of or delay to such party's

business, or for special, indirect, or consequential damages, or for loss of profit or income.

Section 6. DISPUTES

6.1 The Parties agree to be bound by and subject to the procedures established in this Section 6 as an agreement regarding dispute resolution procedures that shall survive expiration or earlier termination of the term of the Agreement and thereafter for so long as either party has any obligation originating under the Agreement. The provisions of this Section 6 are intended to accord with Chapter 2260 of the Texas Government Code and TxDOT rules promulgated thereunder.

6.2 All disputes arising under the Agreement shall be resolved pursuant to the informal resolution procedures in this Section 6.2. As a condition precedent to the right to have any dispute resolved pursuant Sections 6.3 or Section 6.4, the claiming party must first attempt to resolve the dispute directly with the responding party through the informal resolution procedures. A party desiring to pursue a dispute against the other party shall initiate the informal resolution procedures by serving a written notice on the other party. The notice shall contain a concise statement describing an explanation of the dispute, including a description of its nature, circumstances, and cause, and the claiming party's desired resolution of the dispute. Commencing within five business days after the notice of Dispute is served and concluding 10 business days thereafter, the chief executive officer of User and the Director, Railroad Division of Owner, shall meet and confer, in good faith, to seek to resolve the dispute raised in the claiming party's notice of dispute. If they succeed in resolving the dispute, User and Owner shall memorialize the resolution in writing and thereafter each party shall then promptly perform its respective obligations in accordance with the agreed resolution of the dispute. If a dispute is not timely resolved, if the claiming party is the User then it may file a claim under Section 6.3. If the claiming party is Owner then it may exercise its rights under Section 6.4.

6.3 If a dispute is not resolved using the informal resolution procedures set forth in Section 6.2, User must file a claim in accordance with Texas Government Code chapter 2260 and the rules of TxDOT.

6.4 Owner retains its authority to file a claim in a court of competent jurisdiction. The procedure for Owner to file a claim in a court of competent jurisdiction, including the deadline to file a claim, is set by law.

Section 7. GOVERNMENTAL APPROVALS; ABANDONMENT

7.1 User shall at its own cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval, or authority from any governmental agency for

the sanction of the Agreement and the operations to be carried on by User thereunder. Owner, at its expense, shall assist and support said application or petition and will furnish such information and execute, deliver, and file such instrument or instruments in writing as may be necessary or appropriate to obtain such governmental consent, approval, or authority. User and Owner agree to cooperate fully to procure all such necessary consent, approval, or authority.

7.2 In the event Owner shall be involuntarily dispossessed or under threat of condemnation by competent public authority of the right to operate upon and maintain any portion of its Joint Trackage, Owner shall have no obligation hereunder to provide tracks for User's use, and User shall have and shall make no claim of any kind, legal or otherwise, against Owner for failure to provide such Joint Trackage for User's use.

7.3 Under the terms hereinafter stated, and to the extent that Owner may lawfully do so, Owner reserves to itself the exclusive right, exercisable at any time during the life of the agreement without concurrence of User, to elect to abandon all or any part of the Joint Trackage by giving six (6) months prior written notice to User of its intention so to do.

If, at the time of such election, User is the only party (other than Owner) having the right to use the Joint Trackage, Owner shall concurrently with its Notice of Abandonment, and to the extent it is legally able to do so, give to User the option to purchase said Joint Trackage or the part or parts thereof to be abandoned at the net liquidation value thereof, on the date of said notice. "Net Liquidation Value" shall mean fair market value of land and salvage value of track components less estimated cost of removal. User shall have three (3) months from the date of receipt of Owner's notice to exercise its option and shall evidence the exercise of its option by giving Owner written notice thereof. Thereafter User shall immediately make appropriate application to secure all necessary governmental authority for such transaction. Within thirty (30) days following the effective date of all requisite governmental approval of the transaction, User shall pay to Owner the amount of money required to purchase said Joint Trackage to be abandoned at the aforesaid Net Liquidation Value. Upon the receipt of payment of such sum, the Agreement shall terminate as to the part of the Joint Trackage so purchased by User. Contemporaneously with such payment, by instrument or instruments, Owner shall convey and assign by good and sufficient quitclaim deed or deeds, bills of sale, or other instruments, all of Owner's right, title, interest, and equity, in and to the Joint Trackage so purchased. Owner agrees that it shall promptly take all necessary action to obtain from the trustees of its mortgages all releases or satisfactions covering the same and shall deliver to User such instruments.

If User fails to exercise the option herein granted within the time and in the manner above specified, Owner may forthwith proceed free of all obligation to User to make appropriate application to secure all necessary governmental

authority for such abandonment. User agrees that at such time it will concurrently make application for all necessary governmental authority for abandonment of its right to operate over the Joint Trackage. The Agreement shall terminate as to the section of Joint Trackage so abandoned upon the effective date of such approval by governmental authority.

7.4 Upon termination of the Agreement, or any partial termination, as the applicable case may be, however the same may occur, User shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered, and renounced any and all right possessed by User to operate over that part of the Joint Trackage to which such termination applied, and as to such part, User shall forever release and discharge Owner of and from any and all manner of obligations, claims, demands, causes of action, or suits which User might have, or which might subsequently accrue, to User growing out of or in any manner connected with, directly or indirectly, the contractual obligations of Owner under the Agreement, in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release, and discharge of User shall not in any case affect any of the rights and obligations of either Owner or User which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any termination, Owner will remove from Owner's right-of-way any connecting track, and any exclusive facility of User, at User's expense with salvage to be delivered to and retained by User. Upon any partial termination of the Agreement, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

7.5 Each party shall be responsible for any labor claims of, and shall bear the cost of employee protection payable to, its own employees, and the employees of companies affiliated with it, to the extent resulting from the entry into or operation of this Agreement. However, in the event the parties agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties shall enter into a separate written agreement providing that User shall bear all cost and expense for any such retained or additional employees, including, without limitation, all cost and expense associated with labor protection payments which are made by Owner and which would not have been incurred had such retention or provision of employees not been required.

Section 8. OTHER CONSIDERATIONS

8.1 Nothing in the Agreement contained shall limit the right of Owner to admit other companies to the use of the Joint Trackage or any part thereof on such terms and conditions as are satisfactory to Owner. User shall have no right to admit any company, person, firm, or corporation to the use of the Joint Trackage, except as provided in Article 1(c) of the Agreement.

8.2 The Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors, lessees, and assigns, but no sale, assignment, mortgage, or lease by User of any interest or right given it under the Agreement, separate and apart from a corporate merger, sale, assignment mortgage, or lease of User's railroad in its entirety, shall be valid or binding without the prior written consent of Owner.

8.3 The Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto. Notwithstanding the two preceding sentences, if Owner leases the Joint Trackage to a rail operator such entity shall be a third party beneficiary of this Agreement.

8.4 All notices, demands, requests, or submissions which are required or permitted to be given pursuant to the Agreement shall be given by either party to the other in writing by serving the same upon the Vice President of Operations of User and upon the Director, Rail Division of Owner.

8.5 If any covenant or provision of the Agreement not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the parties will make such other arrangements as, under the advice of counsel, will effect the purposes and intent of the Agreement.

8.6 In the event there shall be any conflict between the provisions of this Attachment 2 and the Agreement, the provisions of the Agreement shall prevail.

8.7 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

Attachment 3

[Proof/agreement between UP and TNER that UP is cancelling lease with TNER for the portion of Rail Line identified in this Agreement.]

ASSIGNMENT AND ASSUMPTION AGREEMENT

FOR VALUE RECEIVED, MID-MICHIGAN RAILROAD, INC., doing business as Texas Northeastern Railroad ("Assignor"), ASSIGNS AND TRANSFERS to STATE OF TEXAS, DEPARTMENT OF TRANSPORTATION ("Assignee"), its successors and assigns, all of Assignor's right, title and interest in and to the leases and licenses (collectively, "Licenses") to the extent the Licenses affect the real property ("Property") described on **Attachment 4-1**, which Licenses are listed on **Attachment 4-2**, and copies of which licenses are provided in **Attachment 4-3**.

Assignee agrees to (a) perform all of the obligations of Assignor pursuant to the Licenses as they relate to the Property accruing after the date hereof, and (b) to the extent permitted by the Constitution and the laws of the State of Texas, indemnify, defend and hold Assignor harmless, from any and all claims, actions, or damages, including attorneys fees, caused by or arising out of the acts or omissions of Assignee and/or the performance, failure to perform or breach of any of the Assignee's obligations under this Assignment.

This Assignment is made and accepted without recourse against Assignor as to performance by any party under such Licenses.

All exhibits attached to this Assignment are incorporated herein for all purposes.

Dated this _____ day of _____, 2011.

MID-MICHIGAN RAILROAD, INC.
D/B/A Texas Northeastern Railroad

By:

Title:

**STATE OF TEXAS, DEPARTMENT OF
TRANSPORTATION (Assignee)**

By:

Title:

Attachment 4-1

[Attachment 4-1 will be Page 1 of the boundary survey provided by Union Pacific to TxDOT in August 2010. The survey is dated February 24, 2010.]

Attachment 4-2

**[SEPARATE EXCEL SPREADSHEET WILL SHOW THE LIST OF 19 LICENSES
THAT ARE BEING ASSIGNED]**

Attachment 4-3

[Attachment 4-3 will be copies of the 19 licenses that TNER is assigning to TxDOT]